

a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, religion (creed), sex or national origin, in the sale, rental or other disposition of residential property or related facilities (including land to be developed for residential use), or in the use or occupancy thereof, where such property or related facilities are:

(i) Owned or operated by the Secretary;

(ii) Provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Department after November 20, 1962;

(iii) Provided in whole or in part by loans insured, guaranteed or otherwise secured by the credit of the Department after November 20, 1962; or

(iv) Provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency or unit of general purpose local government receiving Federal financial assistance from the Department under a loan or grant contract entered into after November 20, 1962.

(2) Any discrimination on the basis of race, color, religion (creed), sex or national origin or the existence or use of a policy, practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, religion (creed), sex or national origin in lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans, insured or guaranteed, by the Department after November 20, 1962. Examples of discriminatory practices under subsections (1) and (2) include but are not limited to the following when based on race, color, religion (creed), sex or national origin:

(i) Denial to a person of any housing accommodations, facilities, services, fi-

nancial aid, financing or other benefit provided under a program or activity;

(ii) Providing any housing accommodations, facilities, services, financial aid, financing or other benefits to a person which are different, or are provided in a different manner, from those provided to others in a program or activity;

(iii) Subjecting a person to segregation or separate treatment in any matter related to the receipt of housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity;

(iv) Restricting a person in any way in access to housing, accommodations, facilities, services, financial aid, financing or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under a program or activity;

(v) Treating persons differently in determining whether they satisfy any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity; and

(vi) Denying a person opportunity to participate in a program or activity through the provision of services or otherwise, or affording the person an opportunity to do so which is different from that afforded others in a program or activity.

(3) Noncompliance with relevant affirmative fair housing marketing requirements contained in Department programs and regulations.

(4) A formal finding of a violation of title VIII of the Civil Rights Act of 1968 or a state or local fair housing law with respect to activities also covered by E.O. 11063.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985; 61 FR 5205, Feb. 9, 1996]

§ 107.20 Prohibition against discriminatory practices.

(a) No person receiving assistance from or participating in any program

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or activity of the Department involving housing and related facilities shall engage in a discriminatory practice.

(b) Where such person has been found by the Department or any other Federal Department, agency, or court to have previously discriminated against persons on the ground of race, color, religion (creed), sex or national origin, he or she must take affirmative action to overcome the effects of prior discrimination.

(c) Nothing in this part precludes such person from taking affirmative action to prevent discrimination in housing or related facilities where the purpose of such action is to overcome prior discriminatory practice or usage or to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion (creed), sex or national origin.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

§ 107.21 Prevention of discriminatory practices.

All persons receiving assistance from, or participating in any program or activity of the Department involving housing and related facilities shall take all action necessary and proper to prevent discrimination on the basis of race, color, religion (creed), sex or national origin.

[45 FR 59514, Sept. 9, 1980, as amended at 50 FR 31360, Aug. 2, 1985]

§ 107.25 Provisions in legal instruments.

(a) The following documents shall contain provisions or statements requiring compliance with E.O. 11063 and this part:

(1) Contracts, grants and agreements providing Departmental assistance for the provision of housing and related facilities,

(2) Contracts, grants and agreements regarding the sale, rental or management of properties owned by the Secretary,

(3) Corporate charters and regulatory agreements relating to multifamily and land development projects assisted by the Department,

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(4) Approvals of financial institutions and other lenders as approved FHA mortgagees,

(5) Requests for subdivision reports under home mortgage procedures and for preapplication analysis of multifamily and land development projects, and

(6) Contracts and agreements providing for Departmental insurance or guarantee of loans with respect to housing and related facilities.

(b) The provision or statement required pursuant to this section shall indicate that the failure or refusal to comply with the requirements of E.O. 11063 or this part shall be a proper basis for the imposition of sanctions provided in § 107.60.

§ 107.30 Recordkeeping requirements.

(a) All persons receiving assistance through any program or activity of the Department involving the provision of housing and related activities subject to Executive Order 11063 shall maintain racial, religious, national origin and sex data required by the Department in connection with its programs and activities.

(b) All lenders participating in Departmental mortgage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race, religion, national origin and sex of each applicant and joint applicant for assistance with regard to residential property and related facilities. Racial data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic. If an applicant or joint applicant refuses to voluntarily provide the information or any part of it, that fact shall be noted and the information shall be obtained, to the extent possible, through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

(c) If an investigation or compliance review under this part reveals a failure to comply with any of the requirements of paragraph (a) or (b) of this section, the respondent shall have the burden of establishing its compliance